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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

BRIAN ZULLI,

Plaintiff and Appellant,

v.

TOLL BROTHERS, INC.,

Defendant and Respondent.

2d Civil No. B231622
(Super. Ct. No. 56-2009-00355330-CU-
OR-SIM)
(Ventura County)

ORDER DISMISSING APPEAL

Brian Zulli purports to appeal from an order staying an action and compelling arbitration pursuant to Code of Civil Procedure¹ section 1281.2 and Civil Code section 930, subdivision (b). Because the order is not appealable (e.g., *State Farm Fire & Casualty v. Hardin* (1989) 211 Cal.App.3d 501, 505-506), we dismiss the appeal.

In 2003, Zulli purchased a new home built by Toll Brothers, Inc. (Toll).² The purchase agreement and addendum thereto provide among other things that the

¹ All further undesignated statutory references are to the Code of Civil Procedure.

² Normally, a statement of the facts and procedural history would be derived from the record on appeal. Here, however, the record as designated by Zulli consists of the minute orders granting Toll's motion to stay the action and compel arbitration, Zulli's notice of appeal, and his notice designating the record on appeal. Zulli's three-page brief is equally devoid of relevant facts. We therefore derive the relevant facts from the uncontested statements set forth in Toll's brief.

transaction was subject to the statutory requirements of the Right to Repair Act (Civ. Code, § 895 et seq.), and that any disputes related to the property or its purchase were to be resolved through a detailed claim process that culminates in binding arbitration.

After the purchase, Zulli purportedly discovered construction defects in the subject property. Instead of initiating the claim process as provided in the purchase agreement and addendum, Zulli filed a complaint for damages. Toll thereafter filed a petition to stay the action and compel arbitration in accordance with section 1281.2 and Civil Code section 930, subdivision (b).³ The court granted the motion, and Zulli appealed.

"The right to appeal is wholly statutory. [Citation.]" (*Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal.4th 1, 5.) Section 1294 provides that orders *denying* a petition to compel arbitration are appealable, and other appealable judgments and orders are listed in section 904.1. No mention is made of the type of order appealed from here, in which the court has granted a petition to stay an action and compel arbitration. The order is therefore not appealable. (*State Farm Fire & Casualty v. Hardin, supra*, 211 Cal.App.3d at pp. 505-506 [orders compelling arbitration are not appealable]; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1229 [same].)⁴ "The rationale behind the rule making an order compelling arbitration nonappealable is that inasmuch as the order does not resolve all of the issues in controversy, to permit an appeal would delay and defeat the purposes of the arbitration statute. [Citations.] However, a party compelled to arbitrate is entitled to have the validity of the order

³ Subdivision (b) of Civil Code section 930, which is part of the Right to Repair Act, provides in pertinent part: "If the claimant does not conform with the [prelitigation] requirements of this chapter, the builder may bring a motion to stay any subsequent court action or other proceeding until the requirements of this chapter have been satisfied."

⁴ The notice of appeal erroneously indicates that the order is appealable as "[a]n order after judgment" under subdivision (a)(2) of section 904.1.

reviewed on his appeal from a judgment confirming an award.' [Citation.]" (*State Farm Fire & Casualty, supra*, at p. 506.) Accordingly, the appeal must be dismissed.⁵

The appeal is dismissed. Toll shall recover its costs on appeal.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

⁵ In *State Farm Fire & Casualty v. Hardin, supra*, the court recognized: "In exceptional situations, a party aggrieved by an order compelling arbitration may seek appellate review of the order by a petition for writ of mandate. [Citation.] Although we have no jurisdiction to entertain this appeal, we are aware that we have the power to deem the purported appeal a petition for writ of mandate. Because an appellate court should exercise this jurisdiction only in unusual circumstances [citation], and because this case presents no unusual circumstances, we decline to treat the matter as a petition for writ of mandate." (211 Cal.App.3d at p. 507.) Zulli similarly fails to identify any unusual circumstances that would justify extraordinary writ review. He offers no support for his assertion that the court's order "allegedly contradicts" an order issued in a class action involving the same residential development. He also refers to the court's authority to delay an order to arbitrate when other issues not subject to arbitration are the subject of a pending action between the parties (§ 1281.2, subd. (c)), yet fails to identify the existence of any such issues or action.

David Worley, Judge
Superior Court County of Ventura

Brian Zulli, in pro. per., for Appellant.

Samuels, Green & Steel, Jeffrey S. Grider for Respondent.